



**STATE OF NEW JERSEY**

**Board of Public Utilities**

Gateway Center  
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR )  
AN ORDER AUTHORIZING MAXCESS, )  
INC. TO PROVIDE LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICES )  
THROUGHOUT NEW JERSEY )

ORDER OF APPROVAL

DOCKET NO. TE00040263

(SERVICE LIST ATTACHED)

BY THE BOARD:

This Order memorializes the action taken by the Board of Public Utilities ("Board") in this matter, by a vote of three Commissioners, at its November 9, 2000 public agenda meeting.

By letter dated April 1, 2000, Maxcess, Inc. (Petitioner or Maxcess) filed a petition with the Board requesting authority to provide local exchange services throughout the State of New Jersey. In addition, Maxcess responded to a Staff questionnaire by letter dated July 27, 2000, and to Staff interrogatories by letters dated October 3, 2000 and October 10, 2000.

According to the petition, Petitioner was incorporated under the laws of the State of Florida on June 8, 1998. Petitioner's principal offices are located at 100 West Lucerne Circle, Suite 500, Orlando, Florida 32801. Petition at 2, 3.

Petitioner submitted copies of its Articles of Incorporation, Florida Certificate of Good Standing and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. Petition at 3, Exhibit A, October 3, 2000 letter at 3 and October 10, 2000 letter, Exhibit A. According to the petition, Maxcess was formed to provide local exchange services. Petition at 1. Petitioner advised that Maxcess is currently authorized to provide facilities-based local exchange telecommunications services in Alabama, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. October 3, 2000 letter at 9. Maxcess has not been denied authority to provide telecommunications services in any state. In addition, Maxcess has no pending civil, criminal or administrative actions against it in any jurisdiction.

In its petition, Petitioner advised that it seeks authority to provide local exchange telecommunications services to customers throughout New Jersey. Its plans include offering the following core services: DSL, Internet Service, Dial up Access, T1 services, Collocation Services, and Network Integration Services. It plans initially to offer these services to business and high-capacity residential customers in Trenton, Princeton, Morristown, Elizabeth and Newark. Petition at 4, Questionnaire at 4.

Petitioner requested a waiver of the rules requiring that its books and records be maintained in accordance with the Uniform System of Accounts (USOA) and within the State of New Jersey. Petitioner requested that, in the interest of efficiency and to prevent undue burden, its books and records be maintained in accordance with Generally Accepted Accounting Principles (GAAP). Petition at 8. Petitioner also requests permission to keep all books, records, documents and other writings incident to the conduct of business of Petitioner in the State of New Jersey at Petitioner's corporate offices in Tulsa, Oklahoma. October 3, 2000 letter at 10. Petitioner also stated that, upon written notice from the Board, it will produce its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records. October 10, 2000 letter at 2.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petition at 8. Petitioner also asserted that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and promote efficiency. Petition at 8.

With regard to its technical and managerial qualifications, Maxcess stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petition at 6. Petitioner submitted the professional biographies of its key personnel who, according to Maxcess, are well qualified to execute its business plans, and have extensive managerial and technical experience in the telecommunications industry. Petition at 6, Exhibit B.

Petitioner has submitted actual income operations statements and balance sheets as evidence of sufficient financing.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State, or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Maxcess' petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources, which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange telecommunications services in New Jersey subject to approval of its tariff and submission of its own pro forma financial statements. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemptions from maintaining its books and records in New Jersey and under the USOA.

DATED: 3/7/01

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
FRANCES L. SMITH  
SECRETARY